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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,475	12/13/2000	Daniel B. McKenna	9286/001c2	6260
24283	7590	04/22/2004	EXAMINER	
PATTON BOGGS 1660 LINCOLN ST SUITE 2050 DENVER, CO 80264			HO, DUC CHI	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 04/22/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,475

Applicant(s)

MCKENNA ET AL.

Examiner

Duc C Ho

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2.3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22-29 have been renumbered 34-41.2. Claims 1, and 22 (original claim) are objected to because of the following informalities:

Regarding claim 1, lines 8-9, the words " a to" in --- to provide **a to** a plurality of subscribers who are authorized --- appear to be a typo error.

Regarding claim 8, it is suggested that the use of "a communiqué" in line 8 to be replaced with --- said communiqué --- for consistency throughout the claim language.

Regarding claim 22 (original), the cancellation of claim 21 from which claim 22 being dependent to renders the claim 22 unexamined.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 1-7, 25, 38-41, 8-14, 34-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, in lines 11, and 17 recites the limitation "said selected cells". There is insufficient antecedent basis for this limitation in the claim. The same remark applies to claim 3, in lines 4, 6, and 7-8. The same remark applies to claim 10, lines 2, 5, and 7-8.

Claim 8 recites the limitation "said selected plurality of cells" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said selected cells" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 34, line 4, the term "each" in --- each said received program content --- renders the phrase vague, and indefinite, since a plurality of program content has not been mentioned previously. The same remark applies to claim 36, line 8. The same remark applies to claim 38, line 6. The same remark applies to claim 40, line 7. The same remark applies to claim 41, lines 3-4. The same remark applies to claim 32, line 7.

Claim 36 recites the limitation "said at least two classes" in line 6. There is insufficient antecedent basis for this limitation in the claim. The same remark applies to claim 37, line 4. The same remark applies to claim 40, line 5. The same remark applies to claim 32, lines 5-6. The same remark applies to claim 33, line 5.

Claim 25 (original) recites the limitation "said cell sites" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 (original) recites the limitation "said associated assigned ones" in line 10. There is insufficient antecedent basis for this limitation in the claim. The same remark applies to claim 36 (renumbered), line 9. The same remark applies to claim 40, lines 8-9.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 23-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Mcallan (WO 00/02389-in IDS record #2).

Regarding claim 23, Mcallan discloses an information access with targeted marketing capability. The international master server 1-fig.1 receives news and entertainment content from content providers, and transmits the content to a cellular carrier 2-fig. 1 to the cellular network 5, see page 3-line 20 to page 4-line 9.

Program manager means (the international master server 1-fig. 1) *for receiving program content* (the content from content provider/advertiser 1-fig.1, see page 3-line 20 to page 4-line 9) *from a plurality of program sources;*

Spatial temporal content manager means (the server 1 inherently includes circuits and software modules for selecting at least one cell from the cellular network 5

via the cellular carrier 2-fig.1) *for selecting at least one of the plurality of cell sites to provide a communiqué communication service; and*

Router means for routing program content from at least one of the plurality of program sources to the selected at least one of the plurality of cell sites for transmission via a one of said plurality of wireless communication channels to a plurality of wireless subscriber devices served by said selected at least one of said plurality of cell sites to provide said communiqué communication service (the server 1 inherently includes routing means for routing to other regional servers 3-fig. 3, or to cellular network 3-fig. 2).

Regarding claim 24, the content provider-fig. 1 provides news and entertainment content in format of program streams, each of which comprises at least one media such as audio.

Regarding claim 30, in Mcallan the communication architecture enables the delivery of content through satellite or terrestrial line service. Further, the Mcallan system is able to transmit the received content from the content provider via one of many transmission channels.

Regarding claim 25, the international master server 1-fig. 1 inherently includes the distribution means and the routing means, in which the routing means includes control signals for transmitting selected program to selected cell in the network 5.

Regarding claim 26, the cellular network 5 inherently includes communiqué generation means for generating programs as received from the content provider, and distributing the selected program to requested devices in at least one cell, see page 4-line 10 to page 5-line 24.

Regarding claim 27, this claim has similar limitations as claim 25. Therefore, it is rejected under Mcallan for the same reasons set forth in the rejection of claim 25.

Regarding claims 28-29, the functions to generate and to transmit a plurality of subframes to subscriber devices of the selected cells are known in the art.

Allowable Subject Matter

7. Claims 31-33 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Claims 1-7, 38-41, 8-14, and 34-37 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mashinsky (US 6,442,258); Stern (US 6,612,932) are cited to show a communiqué system with dynamic bandwidth allocation in cellular communication networks, which is considered pertinent to the claimed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Ho whose telephone number is (703) 305-1332. The examiner can normally be reached on Monday through Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 703-308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,

Arlington, VA, Sixth Floor (Receptionist).

Patent Examiner

A handwritten signature in black ink, appearing to read 'Duc Ho', written over the printed name.

Duc Ho

4-16-04